

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1474 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI FULUBHAI

Versus

AMBABEN MANILAL

Appearance:

MR AP MEDH for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2000

ORAL JUDGEMENT

#. Aforesaid Revision Application is on Board since long and the learned advocate for the petitioner is not present from the beginning. The matter is of the year 1983. Therefore, it is taken up for hearing today after

having waited sufficiently for a long time.

#. The petitioner is the original defendant against whom the respondent herein had filed a suit being HRP Suit No. 4866 of 1975 in the Court of Small Causes at Ahmedabad.

#. The case of the plaintiff in the said suit was that the plaintiff is the owner of the suit property situated in Saraspur area, Salvivad, Piplavalo-Khanchu, Ahmedabad bearing MC No.160/2,160/3. That according to the plaintiff, the defendant is a statutory tenant of the suit premises and that the rent of the suit premises was Rs. 43/- p.m. According to the plaintiff defendant is irregular in payment of the rent and that the rent is due from 1.11.1966. Previously the land lord had filed the suit being HRP Suit No. 3964 of 1970 which was ended in settlement on 16.2.72. In the said suit the defendant had paid Rs. 1315/- and after the said settlement had paid Rs. 1100/-. Thereafter execution proceedings No. 636 of 1974 was filed in which the defendant took a contention that the decree was only for the amount due and not for possession. Various other contentions were also taken by the defendant in that execution application. Thereafter the defendant was served with a notice on 15.9.75 and terminated his tenancy and also demanded possession of the property on the ground of arrears of rent.

#. The defendant appeared in the suit and filed written statement at exh.19. It was stated that Rs. 43/is excessive rent and that standard rent should be fixed. The defendant also contended that since the earlier suit was settled, the defendant cannot get possession by demanding arrears of the said period.

#. The learned Trial Judge framed various issues and thereafter after recording the evidence came to the conclusion that the plaintiff is entitled to possession on the ground of arrears of rent. The Trial Court fixed standard rent at Rs. 43/- p.m. The Trial Court ultimately by judgment and order dated 13.9.79 decreed the suit of the plaintiff for possession with costs. The Trial Court also passed a decree for arrears of rent from 1.11.75 till realisation as mesne profits.

#. Aforesaid decree of the Trial Court was challenged by the present petitioner by way of appeal being Civil Appeal No. 354 of 1979. The Appellate Court came to the conclusion that since the tenant has failed to pay up the arrears of rent within one month of the receipt of the

notice , decree under section 12(3)(a) was required to be passed. The Appellate Court found in para 10 of its judgment that the standard rent of the suit premises was, fixed long before by the Court and therefore, it was obligatory on the part of the tenant to sent all the arrears of rent that had fallen due against him within one month from the date of receipt of the notice. Considering the aforesaid facts, both the courts below have come to the conclusion that the case falls under section 12(3)(a) of the Rent Act. On the question whether the consent decree was a nullity or not, the learned Appellate has given detailed reasoning in para 9 of his judgment. The executing court in fact had not declared the decree in HRP Suit No.. 3964 of 1970 as a nullity. The consent decree was produced on record at exh.58 and as per the same standard rent was fixed at Rs. 43/- p.m. on 16.2.72 and as per the compromise the present petitioner was given installments for payment of arrears of rent. However, even though the defendant no.1 had committed default of more than 4 installments, the executing court had refused to issue warrant for possession as it considered the said decree for possession that of a penal nature but the executing court had not set aside the order of Trial Court as regards fixation of standard rent. It therefore, cannot be said that the order of fixation of standard rent was set aside by the executing court. In that view of the matter, the tenant having failed to comply with the suit notice which was given by the landlord before filing of the present suit cannot get protection against the decree for eviction passed under section 12(3)(a) of the Bombay Rent Act. I therefore, do not se any error of law committed by the courts below. In that view of the matter there is no substance in this revision application and the same is required to be dismissed. According this Revision Application is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

(P.B.Majmudar.J)

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